

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7979 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PRAMILABAI VITHALBHAI

Versus

COMPETENT AUTHORITY & DY. COLLECTOR, ULC

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Appearance:

MR MUKESH R SHAH for Petitioner  
GOVERNMENT PLEADER for Respondent No. 1  
SERVED BY DS for Respondent No. 2

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 16/12/97

ORAL JUDGEMENT

Rule. Mr DN Patel learned AGP waives service on behalf of the respondent no. 1. With the consent of the learned advocates, this petition is finally heard today. Mr Shah learned advocate seeks leave to delete the name of respondent no. 2. Leave granted.

The petitioner in this petition under Article 227

has challenged the order Annexure-C dated 7-9/5/1983 passed by the competent authority and Addl. Collector (ULC) and the order dated 9.10.1997 Annexure-D passed by the Urban Land Tribunal in Appeal no. Baroda-25/97 upholding the order at Annexure-C passed by the competent authority. It is the case of the petitioner that the land bearing survey no. 1132 now final plot no. 191 admeasuring 2833 sq.mts. of land was originally belonging to Ranchhodbhai Vankar who has died much prior to Urban Lands Ceiling Act came into force. That after the death of Ranchhodbhai the land in question was entered into the record of rights in the name of the mother of the petitioner and her brother Kanjibhai. The mother of the petitioner died in the year 1969 and that the land in question being ancestral property wherein the petitioner had share. Apart from the said facts, the mother of the petitioner in fact, executed a Will dated 25.5.69 and has given her share to the petitioner.

When the Urban Lands Ceiling Act came into force, the brother of the petitioner namely Kanjibhai filled in form u/s. 6 of the Act and has also filed declaration wherein he has mentioned that the petitioner had share and interest in the land in question. On 1.5.1982 the petitioner also made an application before the respondent no. 1 that the petitioner has interest in the land in question and has in fact, produced the copy of the Will before respondent no. 1. The respondent no. 1 without serving any draft statement and/or notice upon the petitioner declared 745sq.mts of land as excess vacant land by giving only one unit to the brother of the petitioner. The petitioner preferred an appeal before the Appellate Authority and the same was rejected on the ground that the appeal is filed after the long delay.

Having heard the submissions made on behalf of the parties, I am of the view that the petitioner has at least made out a case, this is in view of the fact that in the form under sec. 6 of the Act, a declaration is made by the brother of the petitioner that the petitioner has a share and interest in the land in question. The petitioner has in fact, applied before the competent authority with the copy of the Will and has pointed out that she has interest in the land in question. IN view of this undisputed fact it is the duty of the respondent no. 1 at least to issue a notice and could have heard the petitioner before passing the final order. Since the same has not been done by the respondent no. 1, as the petitioner is not unnecessary party but a proper party and since the appellate authority has not considered this

aspect and has reject the appeal highly on a technical point on the question of delay, I am of the view that the matter is required to be remanded back to the competent authority with a direction to hear and decide the matter afresh and, in accordance with law after hearing the petitioner.

In the result, the petition is allowed. The impugned orders Annexures-C & D are quashed and set aside. The matter is remanded back to the competent authority to take appropriate decision in the matter after hearing the petitioner and concerned parties. Rule is made absolute with no order as to costs.

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